

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant/owner: Burt Ewart & Linda Muerle
327 Shays Street
Amherst, MA 01002

Date application filed with the Town Clerk: May 5, 2010

Nature of request: Request to renew and/or modify ZBA FY2009-00021 (which allowed for the keeping of horses) in accordance with Condition # 13, under Section 10.33 and 5.014 of the Zoning Bylaw

Address: 327 Shays Street (Map 20D, Parcel 28, R-N Zoning District)

Legal notice: Published on May 12, 2010 and May 19, 2010 in the Daily Hampshire Gazette and sent to abutters on May 12, 2010

Board members: Tom Simpson, Hilda Greenbaum, Mark Parent

Submissions:

- ZBA application, filed with the Town Clerk on May 5, 2010;
- Previous Special Permit, ZBA FY2009-00021;
- Management Plan approved on May 2, 2009;
- Final site plan and fence details approved on July 9, 2009.

Submitted June 24, 2010

- Letter, dated May 24, 2010, from Carol Campbell;
- Email communication between Carol Campbell (red text) and Burt Ewart (red text), dated May 26, 2010;
- Two (2) letters in support of the application, one from Ron and Betty Rosbottom, 326 Shays Street and Clause and Anne Becker, 333 Shays Street;

- Photographs of the fence line, taken last fall;
- Example photographs of painted fences;

Submitted July 15, 2010

- Two (2) Town GIS maps, prepared by Town staff;
- Letter from Mark Huyler, Ph.D., dated July 7, 2010;
- Photographs of the existing weathervane atop the applicant's barn
- Letter from Masoud Hashemi, PhD, dated July 8, 2010;
- Deed
- Information from Rutger's University

Submitted August 19, 2010

- Letter from the applicant to ZBA, dated August 17, 2010
- Email communication from Carol Campbell, dated August 19, 2010;

Site Visit: May 26, 2010

Tom Simpson, Hilda Greenbaum and Mark Parent met the applicant, Burt Ewart, on the site. The following was observed:

- The location of the property on the west side of Shays Street and existing single family dwelling;
- The topography decreasing significantly in elevation from the road to the rear of the property;
- The location of the existing horse barn, paddock area, and manure pile behind the barn and adjacent to the north property line;
- The interior of the barn.

The Board members also viewed the subject property from the property to the north, 299 Shays Street, owned by Carol Campbell.

Public Hearing: May 27, 2010

This meeting was re-scheduled to June 24, 2010, due to a power outage that closed Town Hall on May 27, 2010.

Public Hearing: June 24, 2010

Burt Ewart and Linda Muerle presented the petition. Ms. Muerle stated that they received a Special Permit to keep horses on the property last year. The permit required renewal after one year and contained several conditions they would like to have modified, as follows:

- Condition # 13 - To extend the renewal requirement from one (1) year to 3 to 5 years; and
- Condition # 2 - To remove the requirement for an eight (8) foot fence.

Mr. Parent disclosed that he knows Ms. Campbell and that this relationship will not affect his ability to objectively decide on this application. Ms. Campbell stated the following:

- She thanked the Board for taking into consideration her concerns last year, which were mainly the odor of the manure/urine and the visual impact of the horses;
- She referred to her email of May 24, 2010 which stated that an eight (8) foot fence would actually be more of a negative impact than no fence at all.
- She stated the manure is not being removed monthly and is currently kept under a tarp. When the weather is hot, the manure has a strong odor.

Mr. Simpson stated the Special Permit to keep horses in a residential neighborhood was granted with conditions and that those conditions are not recommendations but are mandates. He read from condition # 6 which states that "manure shall be removed from the temporary structure at least once per month or more frequently as may be necessary for odor control". He stated that at the site visit, the Board members were told the manure had not been removed since October and that it would be removed shortly and spread on the lawn. He stated that it seems that the applicant may be in violation of the Special Permit.

The Board members discussed the following:

- Whether there is any other location on the property where the manure could be located.
- That the intent of the original permit was not to allow for composting of manure, but rather that it be stored temporarily and removed from the property;
- The contents and agreement stated in the email communications from the applicant and neighbor, dated May 26, 2010.

Ms. Muerle stated she originally consulted with their attorney and determined that his presence was not necessary. However, at this time, she requested the Board continue the hearing so that their attorney could be present for the rest of the decision making process.

Mr. Simpson MOVED to continue the public hearing to July 15, 2010 at 7:30 p.m. Mr. Parent seconded the motion and the Board VOTED unanimously to continue the public hearing.

Public Hearing: July 15, 2010

Albert Albano, introduced himself to the Board and stated that he is representing Linda Muerle and Burt Ewart. He noted that he had reviewed the files in the Planning Department office and obtained an audio recording of the last meeting.

Mr. Albano provided the following information to ensure that issues raised at the last meeting were clarified:

- His clients should have requested a modification to the permit rather than disregarding the requirement to install an eight (8) foot fence. However, the neighbor has agreed that the existing six (6) foot fence is adequate and that a new taller fence would have more of a negative visual impact;
- His clients have withdrawn their request for an extended expiration period of 3-5 years in order to prove to the Board that they will comply with the Conditions;
- Although it was not a condition of the former permit, the painting of the barn has been completed,
- The unsightly brush and brambles along the north property line are on Ms. Campbell's property. She would like it to remain to prevent her dog from going into the paddock area;
- The terms "compost" and "manure" were used interchangeably, even though they are different. Manure was never spread on the property, whereas compost – which consists of broken-down manure mixed with bedding material, has been spread on the property;
- The applicants have a letter, dated July 7, 2010, from Mark Huyler of the Department of Veterinary and Animal Sciences at the University of Massachusetts, which says that the prevailing wind is out of the west, from Ms. Campbell's property and toward the paddock/manure location.
- The applicants are willing to paint the side of the fence facing Ms. Campbell's property.

Mr. Albano acknowledged that odor is a significant issue that needs to be addressed. He noted the following:

- Mr. Ewart's notes from the Board's site visit indicate that there was no odor from the manure on that day and this illustrates performance compliance with the conditions of the permit;
- The email from Carol Campbell, dated May 26th, stated that there has been no smell from the manure since last summer. He estimated that it would have been nine (9) months without odor from the manure;
- The letter, dated July 7, 2010, from Mark Huyler, states that he "smelled no aromas that I would consider objectionable even when standing essentially on top of the compost pile";
- The letter, dated July 8, 2010, from Masoud Hashemi, states that "no serious offensive odor was found at the site".
- He was at the site today and did not smell any odors;

- Conditions 5 and 6 both state that manure shall be stored temporarily and do not explicitly prohibit the composting of the manure; therefore, the applicants have been acting in accordance with the conditions.

The Board reviewed the written decision and findings from the previous permit and determined that it was clearly the Board's intent to have the manure removed from the property and not composted.

Mr. Simpson stated that the location of the manure pile seems to be the biggest unresolved issue and that an alternative location for the manure pile, away from Ms. Campbell's property line needs to be identified.

Mr. Albano asked that instead of the Board mandating a location, the Board allow the applicants to review and propose an alternative location, especially given that a large area of the property is within a wetland buffer and any storage of manure in that area would require review and approval from the Conservation Commission.

The Board determined that the hearing should be continued to allow the applicant time to review whether any other locations exist on the property for the manure.

Mr. Simpson MOVED to continue the public hearing to August 19, 2010 at 7:30 p.m. Ms. Greenbaum seconded the motion and the Board VOTED unanimously to continue the public hearing.

Public Hearing: August 19, 2010

Al Albano, Linda Muerle and Burt Ewart were present. Carol Hepburn, Animal Control Officer, was also present. Mr. Albano stated the following:

- Based upon the Board's request of the previous meeting, the applicants are proposing to put the manure on a moveable trailer so it can be hauled off the property on a monthly basis. The applicants would also keep a log book with the date and location to which it was removed;
- The applicants were able to come to an agreement with the Animal Control Officer to bring the manure to Bramble Hill Farm, but request the flexibility to bring it anywhere else that would accept it;
- The preliminary information from the Conservation Commission was that the trailer cannot be located within the 100 foot buffer area without specific approval;
- The barn has been painted one uniform color;
- The applicants are seeking to keep the fence on the north property line as it exists (six feet tall) and that the Board remove the requirement to erect an eight (8) foot fence. Ms. Campbell agreed to this arrangement in the email, dated August 19, 2010.
- The applicant would like to have some flexibility regarding the monthly removal of the manure during the winter months.

Mr. Simpson asked how far from the property line the trailer would be located. The Board noted that the trailer location shown on the August 19th site plan shows the trailer to be about 60-75 feet from the north property line.

The Board discussed the trailer and determined that it shall be painted or stained a uniform color, be covered with a weather proof top/ roof (something more substantial than a tarp) to keep the manure dry and not be parked in close proximity to any property lines.

Mr. Parent commended the applicant for proposing a log book to record when the manure is removed and that it would be critical to ensure that the odor issue is being mitigated. He stated the permit should not be issued for more than one (1) year until the applicants can demonstrate that the condition can be met.

Carol Hepburn, Animal Control Officer, stated she met with the applicants on several occasions and they have come up with the current plan to place the manure on the trailer and remove it at least once per month. Ms. Hepburn stated that, during her site visits, she never smelled any odor from the horse manure. She stated that it is her responsibility to inspect the horses at least once per year and that she could inspect it more frequently, if needed.

Ms. Greenbaum MOVED to close the evidentiary portion of the public hearing. Mr. Parent seconded the motion and the Board VOTED unanimously to continue the public hearing.

Public Meeting:

Mr. Simpson stated the plan to store the manure on the trailer and remove it once per month should be tried for one (1) year. He noted that, perhaps in the future, the permit could be extended, but that a year is necessary to evaluate the current plan. He also stated that he has no objection to removing the condition requiring the eight (8) foot fence.

Ms. Greenbaum expressed concern whether removal of the manure once per month would be adequate in the summer months, and suggested that it may need to be removed once per week. Mr. Parent noted that the Animal Control Office stated that once a month should be sufficient to mitigate the odor. Mr. Simpson noted that the location of the trailer is such that it is no longer adjacent to the north property line.

The Board agreed they are requesting the trailer be a uniform color that is compatible with the property, it contain three (3) sides and a solid roof to prevent infiltration by water and determined that the applicant should submit information and/or final plans for the trailer at a public meeting.

Ms. Muerle expressed concern with being able to remove the manure on a strict monthly basis during the winter months. The Board acknowledged that it may not be possible to remove the manure during a major snow event. However, the Board determined that the manure should be removed at the next feasible time, even if that requires snow removal, and should not be simply postponed until the end of winter.

Specific Findings:

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses in the Zoning District.

With the conditions as written, the use is suitably located in the neighborhood, as follows: This Special Permit allows for the keeping of two (2) horses owned by the residents of the property. The Special Permit will expire in one (1) year when a new permit will be required. The use will then be evaluated by the Board, the applicant, and any concerned neighbors through the public hearing process. The limited permit period will provide any neighbors the ability to voice their concerns, and will allow the Board to take testimony and assess how well the mitigation procedures are working.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site. This permit requires that manure associated with the keeping of horses shall be removed from the property once per month or more frequently in order to control the potential impact of odor on adjacent properties. The manure may be stored temporarily, but not composted, in a trailer with three (3) sides and a roof to prevent infiltration by water. This permit limits the number of horses allowed on the property to two (2) animals and does not allow for the boarding of horses not owned by the residents of the property. The permit will expire one (1) year from the date filed with the Town Clerk. For horses to remain on site, the applicant will be required to renew the permit through the public hearing process allowing for review by the Board and input from abutters

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets. This Special Permit requires that all manure produced must be properly stored and removed from the property once a month and; the permit is conditioned to expire in one (1) year in order to evaluate if any negative impacts of the use are mitigated. The Special Permit requires the owners of the horses to be responsible for the removal of any manure from any public way in order to maintain the health, safety and general welfare of the residents of the Town of Amherst. Access to and from the paddock has been provided on the site plan. Vehicular and pedestrian movements are not affected by this use.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use. The property already is improved with an enclosed paddock area suitable for the keeping of horses. The barn, when completed, will provide adequate areas for the storage of hay and other equipment. Additionally, animal feed is required to be kept in rodent and vermin proof containers and any excess will be stored in the garage attached to the single family dwelling. The intent of the conditions of this Special Permit are to ensure the manure is removed from the property and stored only in the trailer with a log being kept of when the manure is removed.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes. This permit requires the removal of manure from the property at least once per month or more frequently if necessary to mitigate odor. The manure may be stored temporarily, but not composted, in a trailer with three (3) sides and a roof to prevent infiltration by water. The trailer shall be painted and constructed so as to create a unified appearance which is compatible with the surroundings.

10.392 – The proposal provides adequate landscaping, including the screening of adjacent residential uses. The existing six (6) foot fence and existing vegetation on the property provide adequate screening of the barn structure and manure pile associated with the keeping of horses.

10.395 – The proposal does not create disharmony with respect to the use, scale and architecture of existing buildings in the vicinity. With the conditions as written, the use is generally compatible with the surrounding neighborhood, as follows: This Special Permit requires measures to mitigate the potential impact of the use on adjacent properties. The use is located at the rear of the property.

The topography of the land provides adjacent property owners with a view down into the paddock from a higher elevation. This permit requires the existing fence to be maintained in good condition in order to help mitigate the visual impact of the barn, storage of manure and general visual impact of the horses. This permit requires that horse manure shall be removed at least once per month in order to mitigate the impact of the odor on adjacent property owners. Additionally, the manure may be stored temporarily, but not composted, in a trailer with three (3) sides and a roof to prevent infiltration by water. This permit limits the number of horses allowed on the property to two (2) animals and does not allow for the keeping of horses not owned by the residents of the property. The permit will expire one (1) year from the date filed with the Town Clerk. The applicant will be required to renew the permit through the public hearing process.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw and it protects the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst. With the conditions as written and enumerated herein, the use is generally compatible with the surrounding neighborhood. The visual and olfactory impact has been addressed by requiring the storage of manure in a covered trailer away from property lines and disallowing the long term storage or composting of manure on the property.

Public Meeting – Zoning Board Decision

Mr. Simpson moved to APPROVE the application with conditions. Mr. Parent seconded the motion. For all of the reasons stated above, the Board VOTED unanimously to modify the conditions of ZBA FY2009-00021, and thereby grant Special Permit, ZBA FY2010-00012, to allow the continued keeping of two (2) horses, under Section 5.041 of the Zoning Bylaw, at 327 Shays Street (Map 20D, Parcel 28, R-N Zoning District), with conditions.

TOM SIMPSON

HILDA GREENBAUM

MARK PARENT

FILED THIS _____ day of _____, 2010 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2010.

NOTICE OF DECISION mailed this _____ day of _____, 2010
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2010,

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2010-00012, to modify the conditions of ZBA FY2009-00021, and allow the continued keeping of two (2) horses, under Section 5.014 of the Zoning Bylaw, as applied for by Burt Ewart and Linda Muerle, at 327 Shays Street (Map 20D, Parcel 28, R-N Zone), with the following conditions:

1. There shall be no more than two (2) horses kept on the property at any one time. The two (2) horses shall be owned by the residents of the property.
2. The existing six (6) foot solid fence which runs the length of the barn and the existing split rail fence running the length of the property line and paddock area should remain and be maintained in good condition.
3. Manure storage shall be temporary and contained within a trailer, as described in the letter from the applicant stamped approved on August 19, 2010. The trailer shall be as follows:
 - a. Constructed with such a design so as to have a weather/rain proof roof with three (3) sides and a tailgate;
 - b. Located either as shown on the site plan dated August 19, 2010 (which shows a "new manure trailer" location); or at a location mutually agreed to by the abutters.
 - c. Painted a solid/unified color to blend in with the surroundings;
4. Evidence and/or information regarding the design and construction of the trailer shall be reviewed and approved by the Zoning Board of Appeals at a public meeting within 30 days of this permit being filed with the Town Clerk.
5. Manure shall be removed from the property once per month or more frequently as may be necessary for odor control.
 - a. Storage of the manure shall be temporary and contained only within the covered trailer. Composting or spreading of manure shall not be allowed.
 - b. A detailed log of when and to where the manure was moved shall be kept.
6. There shall be no stallions kept on the property.
7. All grains or feed supply shall be kept in rodent and vermin proof containers.
8. All manure produced by the horses of this applicant on any other private or public property, or public way, shall be promptly removed by the owner.
9. There shall be no commercial use of the property associated with the keeping of horses.
10. All exterior lighting shall be downcast to prevent the casting of light onto adjacent properties.
11. The property shall be managed according to the Management Plan approved on April 2, 2009.
12. The Special Permit shall expire in one (1) year from the date of filing with the Town Clerk at which time the applicant may submit an application for renewal or modification of the Special Permit.

Tom Simpson, Chair
Amherst Zoning Board of Appeals

DATE